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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

Debtor RICHARD E REES and ANITA REES (“Debtor”) hereby move the Court, pursuant to 11 USC §362(c)(3)(B), to continue the automatic stay in his bankruptcy as to all creditors. This Motion is supported by the following:

## BACKGROUND

1. Debtor filed for protection under Chapter 13 of the United States Bankruptcy Code on January 9, 2020. Russell Brown was appointed as the Chapter 13 Trustee.
2. Prior to Debtor's current Chapter 13 bankruptcy filing, Debtor had filed for protection under Chapter 13 of the United States Bankruptcy Code on July 3, 2019 in Phoenix, Arizona, Case No. 2:19-bk-08276. The Debtor's prior Chapter 13 bankruptcy was dismissed by order of the Court entered on December 16, 2019. The bankruptcy was dismissed at the request of the Chapter 13 Trustee because debtors failed to comply with the Trustee Recommendation and failed to file an objection to the Recommendation and obtain a hearing date.
3. Debtors failed to comply with Trustee Recommendations due to Debtor's hospitalization due to open heart surgery in September 2019 and Debtor extended hospitalization.

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4. Debtor's health is now stabilized and there is every reason to believe that Debtor will be able to complete his obligations in the present case.

## DISCUSSION

5. The Automatic Stay of 11 USC §362 terminates on the 30<sup>th</sup> day after a petition is filed if a debtor had a prior petition pending in the preceding year and that bankruptcy was dismissed. 11 USC §362(c)(3)(A). On a motion of a party in interest for a continuation of the automatic stay, the Court may extend the stay in particular cases as to all or any creditors after notice and a hearing completed before the expiration of the 30 day period if the party in interest demonstrates that the filing of the later case is in good faith as to creditors to be stayed. 11 USC §362(c)(3)(B). A case is presumptively filed not in good faith if a previous case under 7, 11 or 13 was dismissed within a one year period prior to the debtor's subsequent bankruptcy filing because the debtor failed to file or amend the petition or other documents as required by the bankruptcy code or the court , provide adequate protection as ordered by the court, or perform the terms of a confirmed plan, or where there is no substantial change in the debtor's affairs and there is no other reason to believe the case will result in a fully performed Chapter 13 Plan. 11 USC §362(c)(3)(C) (I, II); In re *Elliott-Cook*, 357 BR 811, 814 (N.D. Chapter 13 Plan. 11 USC §362(c)(3)(C)
6. The Debtor bears the burden of proof as to the elements necessary to establish good faith. In re *Elliot-Cook* 357 BR at 814. Where there is no presumption of bad faith and no party objects, a request to extend the stay should be liberally granted. Id. The Court looks to the totality of the circumstances to determine whether the Debtor has established the good faith required by 11 USC §362(c)(3). Id.
7. In this case, the Debtor's prior Chapter 13 bankruptcy case was dismissed because Debtor was unable to comply with the Trustee Recommendations due to unanticipated open heart surgery and recuperation time. Moreover, the Debtor has had only one case pending within the preceding year and Debtors did in fact make their monthly trustee payments through the time of Debtor's open heart surgery.
8. There is every reason to believe this case will result in a fully performed Chapter 13 Plan.

## CONCLUSION

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1 For the foregoing reasons, Debtor requests the Court to enter an Order extending the  
2 Automatic Stay of 11 USC §362 as to all creditors for the term of his Chapter 13 bankruptcy.  
3 Debtor requests the Court to rule on this matter on an expedited basis in light of the fact that the  
30 day period for the automatic stay will expire on February 8, 2020.

4 Dated: January 23, 2020

5 Respectfully submitted:

6 /s/ Tom McAvity  
7 Tom McAvity, 034403  
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13 **CERTIFICATE OF SERVICE**

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15 This is to certify that the foregoing was submitted on January 23, 2020 in the United States  
16 Bankruptcy Court for filing and transmittal of notice of electronic filing to the United States Trustee,  
the Chapter 13 Trustee and the ECF registrants appearing in this case.

17 By: /s/ Tom McAvity

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